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Department of Transportation

National Highway Traffic Safety Administration

[Docket No. NHTSA-2012-0116; Notice 2]

BMW of North America, LLC, a subsidiary of BMW AG, Grant of
Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration, DOT

ACTION: Grant of Petition

SUMMARY: BMW of North America, LLC (BMW)¹, a subsidiary of BMW AG², Munich, Germany, has determined that certain model year (MY) 2012 MINI Cooper Countryman passenger cars with optional three passenger rear seating and manufactured between August 1, 2011 and May 23, 2012, do not fully comply with paragraph S4.3 (b) of Federal Motor Vehicle Safety Standard (FMVSS) No. 110, *Tire selection and rims and motor home/recreation vehicle trailer load carrying capacity information for motor vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or less*. BMW has filed an appropriate report dated June 1, 2012, pursuant to 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports*.

Pursuant to 49 U.S.C. 30118(d) and 30120(h) and the rule implementing those provisions at 49 CFR Part 556, BMW has petitioned for an exemption from the notification and remedy

¹ BMW of North America, LLC is a U.S. company that manufactures and imports motor vehicles.

² BMW AG is a German company that manufactures motor vehicles.

requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety. Notice of receipt of the petition was published, with a 30-day public comment period, on September 13, 2012 in the Federal Register (77 FR 56700). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) website at:

<http://www.regulations.gov/>. Then follow the online search instructions to locate docket number "NHTSA-2012-0116."

CONTACT INFORMATION: For further information on this decision contact Ms. Amina Fisher, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202)366-5307.

VEHICLES INVOLVED: Affected are approximately 5,700 MY 2012 MINI Cooper Countryman passenger vehicles with optional three passenger rear seating manufactured between August 1, 2011 and May 23, 2012.

SUMMARY OF BMW'S ANALYSES: BMW explains that the noncompliance is that the vehicle placard on the affected vehicles incorrectly identifies the rear designated seating capacity as "2" when in fact it should be "3," and the total designated seating capacity as "4" when in fact it should be "5."

BMW states that while the vehicle placard incorrectly identifies the vehicle seating capacity, this noncompliance is

inconsequential to motor vehicle safety for the following reasons:

1. It would become clear to a vehicle owner that the rear seat of an affected vehicle contains three sets of seat belts, provides adequate space for three people to occupy the rear seat and that the vehicle in fact does accommodate five passengers not four as labeled.
2. The tire pressure value on the vehicle placard is correct. In fact, the recommended tire inflation pressure for both the five passenger and the four passenger vehicles is the same. Therefore, there is no risk of under-inflation.
3. The vehicle capacity weight listed on the vehicle placard is correct, and is the same for Countryman model vehicles built for four or five occupants. Therefore, there is no risk of overloading.
4. The vehicle's Monroney label³ contains a listing of all options that have been equipped on the affected vehicles. The option regarding the rear seat for three occupants is noted on the Monroney label; therefore, an owner would have been notified at time of purchase of the vehicle that the rear seat is equipped to accommodate three occupants.

³ *Automobile Information Disclosure Act (AIDA)*, 15 U.S.C. §§ 1231-1233

5. The vehicle Owner's Manual contains information pertaining to the vehicle's tires, tire pressure and the vehicle capacity weight. Therefore, if owners check the Owner's Manual, correct information is available for their use.
6. BMW also provides vehicle drivers with help determining the correct tire, tire pressure and loading information by way of toll-free telephone numbers for MINI Roadside Assistance™ (available 24 hours/day) and MINI Customer Relations.
7. BMW has received no customer complaints and is unaware of any accidents or injuries regarding this noncompliance of the affected vehicles.

BMW has additionally informed NHTSA that it has corrected future production and that all other required markings are present and correct.

In summation, BMW believes that the described noncompliance of the subject vehicles is inconsequential to motor vehicle safety, and that its petition, to exempt from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

BACKGROUND REQUIREMENT: Section §4.3 (b) of FMVSS No. 110 specifically states:

§4.3 *Placard*. Each vehicle, except for a trailer or incomplete vehicle, shall show the information specified in §4.3 (a) through (g), . . . , on a placard permanently affixed to the driver's side B-pillar...

(b) Designated seated capacity (expressed in terms of total number of occupants and number of occupants for each front and rear seat location);...

NHTSA DECISION: NHTSA has reviewed BMW's analyses that the noncompliance is inconsequential to motor vehicle safety. NHTSA agrees that understating the number of rear seat occupants poses little safety risk, and vehicle owners will observe three seat belts and correctly identify three seating positions. BMW has provided sufficient documentation that the vehicle placard does comply with all other safety performance requirements. Since the vehicle placard clearly states the correct vehicle capacity weight and tire inflation pressure and NHTSA has verified both are compatible with five occupants, there is little risk of vehicle overloading.

In consideration of the foregoing, NHTSA has decided that BMW has met its burden of persuasion and that the subject FMVSS No. 110 noncompliance is inconsequential to motor vehicle safety. Accordingly, BMW's petition is hereby granted, and BMW

is exempted from the obligation of providing notification of, and a remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to approximately 5,700 vehicles that BMW no longer controlled at the time that it determined that a noncompliance existed in the subject vehicles. However, the granting of this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after BMW notified them that the subject noncompliance existed.

AUTHORITY: (49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

ISSUED ON: June 19, 2013

Claude H. Harris, Director
Office of Vehicle Safety Compliance

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